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August 9, 1994

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Via Messenger

Re: **GN Docket No. 93-252**
Implementation of Sections 3(n) and 332
of the Communications Act
Regulatory Treatment of Mobile Services

Dear Mr. Caton:

Submitted herewith on behalf of Simrom, Inc. are an original plus nine (9) copies of its Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,

William J. Franklin
Attorney for Simrom, Inc.

Encs.
cc: Simrom, Inc.
Chief, Mobile Services Division
Deputy Chief, Land Mobile and
Microwave Division

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	**GN Docket No. 93-252**
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

COMMENTS OF SIMROM, INC.

Simrom, Inc. ("Simrom"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby files comments with respect to the Commission's Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] Simrom's comments are focused on the Commission's regulatory treatment of management agreements involving 220 MHz licensees, and issues ancillary thereto.[2/]

As noted in its Comments filed with respect to the Further Notice of Proposed Rulemaking in this proceeding,[3/] Simrom is in

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[1/] 9 FCC Rcd ____ (FCC 94-191, released July 20, 1994) ("SFNPRM").

[2/] Simrom concurs with the Commission's proposed treatment of CMRS resale agreements. As to CMRS joint marketing agreements involving 220 MHz licensees, for the reasons set forth herein such agreements are pro-competitive in the 220 MHz band.

[3/] 9 FCC Rcd ____ (FCC 94-100, released May 20, 1994) ("FNPRM" or "Spectrum Cap Notice"). In the course of preparing and negotiating management contracts and in providing management services to its customers, Simrom has developed a familiarity with the issues raised by the SFNPRM which will be of assistance to the Commission. Simrom has installed and operated 200 MHz SMR systems pursuant to its management contracts.

the business of providing construction and management services to various licensees in the commercial mobile radio services in the 220 MHz band. Thus, Simrom's qualifications are a matter of public record.

I. MANAGEMENT AGREEMENTS SHOULD NOT BE APPLIED TO NON-PCS, NON-CMRS SPECTRUM LIMITS, SUCH AS THE 220 MHz 40-MILE RULE.

Underlying Policy Concerns. Paragraphs 86 through 98 of the Spectrum Cap Notice (FNPRM) proposed several alternatives for a general CMRS spectrum cap. Those alternatives were a PCS-only spectrum cap, a broadband spectrum cap (broadband PCS, cellular, and SMR),[4/] an all-CMRS spectrum cap, and several variations thereof. Only the all-CMRS spectrum cap was applicable to 220 MHz licenses.

In its proposal, the Commission noted that the need for this spectrum cap arose from the recent, dramatic increase in the amount of available CMRS spectrum, arising both from the completion of the PCS rulemakings and from the substantial reclassification of private-radio spectrum as CMRS. Thus, the Commission correctly reasoned (FNPRM, ¶91) that a spectrum cap could prevent "any licensee [from acquiring] a large amount of spectrum relative to its competitors, [thus] potentially foreclos[ing] opportunities for others to compete in the same geographic area." In antitrust terms, the policy underlying any CMRS spectrum cap seeks to encourage competition within each geographic market.

[4/] Although not specified in the FNPRM, it would appear that the term "SMR" in this context excludes narrowband, 220 MHz SMR services.

Paragraphs 4 through 11 of the SFNPRM then consider the applicability of bona fide management agreements to the PCS spectrum cap, the PCS-cellular cross-ownership rules, or the more general CMRS spectrum cap. Again, the Commission was concerned with anti-competitive effects which might result from a single entity managing an excessive amount of CMRS spectrum in a market.

220 MHz Regulations and Industry Practices. Paragraphs 67 through 73 of the FNPRM discuss the application of the existing 800 MHz SMR licensing limitations in to context of SMR systems designated as Commercial Mobile Service Providers.[5/] Although the 220 MHz SMR systems do not have loading requirements, they are subject to a 40-mile rule for local-license applications and systems.[6/] Those restrictions are based on spectrum-allocation and licensing concerns, and are not substantially intended to prevent anti-competitive conduct.

In general, the FNPRM correctly proposes eliminating those limitations for SMR licensees found to be in the CMRS, and Simrom concurs in that proposal. However, to the extent that such limitations are retained, the Commission should not apply any "attribution by management contract" to find violations with such limitations for 220 MHz licensees.

[5/] Those limitations are the requirements that SMR systems demonstrate loading as a condition for obtaining additional blocks of spectrum and for obtaining multiple licenses at less than 40-mile intervals. See FNPRM, ¶¶71-72 & nn. 127-129; Sections 90.623(c), 90.631(c), 90.627(b), and 90.633(e) of the Commission's Rules.

[6/] See Sections 90.713(d) and 90.739 of the Commission's Rules.

As is common in the 220 MHz SMR industry, Simrom has entered into management agreements based on the Commission's current practices, e.g., that bona fide management agreements are not attributable and cannot cause violations of the Commission's 220 MHz licensing rules. A retroactive reversal of this policy would injure numerous licensees -- those managed not only by Simrom, but also by most other 220 MHz SMR companies -- who have relied upon this policy. Such a reversal would produce substantial disruption in the industry, could prevent the orderly development of the 220 MHz spectrum, and would not serve the public interest.[7/]

Pro-Competitive Environment at 220 MHz. Clearly, the 220 MHz licensees cannot materially affect the amount of spectrum necessary to cause anti-competitive concerns. All 220 MHz licenses as a whole (SMR, data, public safety, and nationwide) occupy only 2 MHz of spectrum (both base and mobile usage); of that amount, the local SMR licenses (the largest category) occupies 1 MHz of spectrum. Even in the worst possible case (which is extremely remote) that a single entity were to manage all local 220 MHz licensees in an area, the 1 MHz of controlled 220 MHz spectrum would be merely "a drop in the spectrum bucket"

[7/] Conversely, no similar policy limitations apply with respect to PCS-only or all-CMRS spectrum caps. PCS is a new service, and (based on the narrowband nationwide PCS auctions) is likely to be a "rich man's club" in any event. Such licensees are unlikely to need third-party managers. Similarly, managed 220 SMR licensees are unlikely to be limited by the proposed 40 MHz CMRS spectrum cap.

when compared with the over 200 MHz of CMRS spectrum available in each market.[8/]

In reality, management of local 220 MHz systems is likely to fracture into several pieces, with multiple entities managing several local 220 MHz systems in each market. Further, some 220 MHz licensees will operating their own systems. This diversified pattern of ownership and management among 220 MHz local licenses will be intensely pro-competitive, as the various licensees and their managers compete to find subscribers in the "right" market niche for their respective narrowband services.

Thus, for the purposes of the SFNPRM, the Commission should not consider management agreements for or among 220 MHz licensees in determining compliance with its 220 MHz spectrum allocation rules.

II. TO THE EXTENT THAT THE COMMISSION RECOGNIZES BONA FIDE WRITTEN MANAGEMENT AGREEMENTS, THE COMMISSION SHOULD PERMIT THE MANAGERS TO ACT ON BEHALF OF THEIR MANAGED SYSTEMS IN MAKING UNIFIED FILINGS WITH THE COMMISSION.

As a second point, Simrom wishes to bring the corollary of the SFNPRM to the Commission's attention. Specifically, to the extent that the Commission recognizes bona fide management agreements for the purposes of applying PCS- or CMRS-spectrum caps, it should permit the managers to act on behalf of their

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[8/] To the extent that 220 MHz management agreements result in anticompetitive effects, those effects (if proven) may be remedied by application of the antitrust laws by the Department of Justice or the Federal Trade Commission.

managed systems in making unified filings with the Commission in certain, carefully subscribed circumstances.

The circumstances within which a manager could act should be subject to the following limitations:

- The filing at issue has equal applicability to all or substantially all of the systems in an area managed by a single entity, such as a request for extension of time to complete construction, a routine notification of completion of construction, or participation in rulemaking proceedings.

- Any unified filing will not diminish the amount of filing or regulatory fees which otherwise would be paid to the Commission.

- The manager has written authority for the licensee to make such a filing, which authority will be available for Commission inspection upon request.

- The filing indicates that the manager is a party to a written management agreement with the licensee, and that the manager possesses written authority to make the filing.

- The manager's authority cannot extend to filings of individual nature, such as applications (such as FCC Forms 401, 490, 574, 703, or their successors) or amendments thereto, unless the manager has authority by virtue of its ownership interest in the licensee.

This procedure will assist the Commission, all licensees operating pursuant to management agreements, and their managers by streamlining the processes by which the licensees may interface with the Commission. Adoption of this procedure will serve the public interest.

CONCLUSION

Accordingly, Simrom, Inc. respectfully requests that the Commission not apply any attribution rules arising from 220 Mhz management agreements to non-PCS, non-CMRS spectrum caps.

Respectfully Submitted,

SIMROM, INC.

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